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9 Attorneys for Plaintiff

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION
13

14 UNITED STATES OF AMERICA,)
15)

16 Plaintiff,)

17 v.)

18 BONNER METAL PROCESSING, LLC,)

19 Defendant.)
20

No.

PLEA AGREEMENT

21 Bonner Metal Processing, LLC (hereafter "BONNER"), and the United States Attorney's
22 Office for the Northern District of California (hereafter "the government") enter into this written
23 plea agreement (hereafter the "Agreement") pursuant to Rule 11(e)(1)(B) of the Federal Rules of
24 Criminal Procedure:

25 The Defendant's Promises

26 1. Bonner Metal Processing agrees to waive indictment and plead guilty to a felony
27 information charging it with violations of the Clean Water Act, 33 U.S.C. § 1319(c)(2)(A) –
28 Knowing Violation of a Pretreatment Requirement; and 33 U.S.C. §§ 1317(d) and 1319(c)(2)(A)
– Operation of a Source in Violation of Pretreatment Standards. Bonner Metal Processing agrees

PLEA AGREEMENT

1 that the elements of the offense and the maximum penalties are as follows:

2 **Elements:**

- 3 a. COUNT ONE: (33 U.S.C. § 1319(c)(2)(A) - Knowing Violation of a
4 Pretreatment Requirement): Knowingly violating a requirement imposed
5 in a pretreatment program approved under 33 U.S.C. § 1342(b)(8) by
6 diluting untreated wastewater prior to discharge into publicly owned
7 treatment works ("POTW") operated by the City of Livermore Water
8 Reclamation Plant ("Livermore WRP").
- 9 b. COUNT TWO: (33 U.S.C. §§ 1317(d) and 1319(c)(2)(A) - Knowing
10 Operation of a Source in Violation of Pretreatment Standards): Knowingly
11 operating and causing to be operated a source in violation of pretreatment
12 standards by discharging pollutants, namely, industrial wastewater
13 containing nickel in concentrations exceeding 3.98 milligrams per liter
14 ("mg/l"), into a POTW operated by Livermore WRP, all in violation of
15 Title 33, United States Code, Sections 1317(d) and 1319(c)(2)(A); and
16 Title 40, Code of Federal Regulations, Section 403.5(d).

17 **Maximum Penalties (per count):**

- 18 a. Minimum term of probation
19 (18 U.S.C. § 3561) 1 year
- 20 b. Maximum term of probation
21 (18 U.S.C. § 3561) 5 years
- 22 c. Maximum fine (18 U.S.C. § 3571) \$500,000
- 23 d. Mandatory special assessment \$400

24 2. Bonner Metal Processing agrees that it is guilty of the offense to which it will
25 plead guilty, and agrees that the following facts are true:

26 Regulatory Background

27 a. The Federal Water Pollution Control Act, commonly referred to as the Clean Water Act,
28 Title 33, United States Code, Section 1251 et seq., was enacted in 1972. Its purpose is the

1 restoration and maintenance of the chemical, physical and biological integrity of the Nation's
2 waters. In addition, the Clean Water Act was enacted to prevent, reduce, and eliminate water
3 pollution and to conserve the waters of the United States for the protection and propagation of
4 aquatic life and wildlife, recreational purposes, public drinking water, and agricultural and
5 industrial uses. To achieve these goals, the Clean Water Act regulates, among other things, the
6 discharge of pollutants into sanitary sewer systems that lead to municipal sewage treatment
7 plants, also known as publicly owned treatment works.

8 b. The City of Livermore Water Reclamation Plant is a POTW operated by the City of
9 Livermore. POTWs are sewage treatment systems designed to collect and treat pollutants in
10 municipal sewage and industrial wastes prior to discharge into waters of the United States. A
11 POTW includes the pipes and sewers connected to the plants, as well as the treatment plant itself.

12 c. Industrial users that discharge pollutants that a POTW is incapable of treating, or which
13 may interfere with the operation of a POTW, are subject to specific national and local
14 prohibitions and "pretreatment" standards. A "pollutant" is defined to include, among other
15 things, sewage, garbage, chemical wastes, and industrial waste discharged into water.

16 d. The Livermore WRP has a National Pollutant Discharge Elimination System ("NPDES")
17 permit issued by the State of California that authorizes it to discharge wastewater into the waters
18 of the State and United States. As required by its NPDES permit, the Livermore WRP maintains
19 a pretreatment program to control and monitor pollutants discharged into its sewer system. That
20 program, approved by the State of California, contains local limits enforceable under the Clean
21 Water Act.

22 e. The United States Environmental Protection Agency has established pretreatment
23 standards for industrial categories that have been determined to be the most significant sources of
24 pollutants. These are commonly referred to as "categorical standards". These standards
25 differentiate between "existing" and "new" sources. A source is "new" for the purposes of
26 categorical standards if its construction was commenced after the publication of the proposed
27 Pretreatment Standards.

28 f. Except as specifically authorized, regulations promulgated by the USEPA prohibit

1 industrial users of POTWs from diluting their wastewater in order to achieve compliance with a
2 pretreatment standard or requirement.

3 g. The Clean Water Act makes it a crime for any person to knowingly violate a requirement
4 imposed in a pretreatment program approved under 33 U.S.C. § 1342(b)(8).

5 h. The Clean Water Act provides for two kinds of pretreatment standards: national
6 pretreatment standards and "local limits." Local limits are developed by certain POTWs and
7 approved by EPA, or by an authorized state, as part of a pretreatment program. One type of
8 national pretreatment standards, are known as "categorical standards" because they have been
9 developed for, and applied to, specific industrial categories. Categorical standards are numerical
10 pollutant reduction requirements or limitations for waste streams resulting from a particular
11 industrial process. These standards are designed to prevent the constituents of such waste
12 streams from passing through a POTW without treatment, or from interfering with the operation
13 of the POTW. These numerical limitations are technology-based, meaning that they are derived
14 from the capability of specific wastewater treatment technology to reduce pollutant discharges.

15 i. The national pretreatment standards, including those applying to the plating industry,
16 govern discharges in the City of Livermore to the Livermore WRP.

17 j. The Clean Water Act requires certain POTWs to develop and implement "local"
18 pretreatment standards or limits. Local limits are federally enforceable when approved as part of
19 a pretreatment program by EPA or by an authorized state.

20 Clean Water Act Violations

21 k. The Clean Water Act makes it a crime for any owner or operator of a source to which a
22 pretreatment standard or prohibition applies knowingly to operate such a source in violation of
23 any such pretreatment standard or prohibition. 33 U.S.C. §§ 1317(d) and 1319(c)(2)(A).

24 l. Bonner Metal Processing owned and operated an electroplating facility located at 6052
25 Industrial Way (Suite A), Livermore, California, in Alameda County, within the Northern
26 District of California. Defendant Bonner Metal Processing is regulated as a new source under the
27 pretreatment regulations because it was incorporated and began operations after August 29, 1983.
28 At all relevant times, Robert K. Bonner was President of Bonner Metal Processing.

1 m. At its Industrial Way facility in Livermore, Bonner Metal Processing operated a nickel
2 plating line, which included a Zincate bath as well as chemical plating baths. There is an on-site
3 wastewater treatment plant at the facility through which all wastewater generated by the plating
4 processes is supposed to pass, undergoing "pretreatment" prior to discharge into the Livermore
5 WRP.

6 n. On September 24, 1999, Bonner Metal Processing knowingly violated pretreatment
7 standards by discharging industrial wastewater containing nickel in concentrations exceeding
8 3.98 milligrams per liter ("mg/l") into a POTW operated by Livermore WRP. On this date,
9 Bonner Metal Processing discharged a solution containing nickel plating rinse by using a hose
10 running from a separate holding tank directly to the sewer.

11 o. On several dates between June 5, 1999 and September 21, 1999, Bonner Metal Processing
12 knowingly violated a requirement imposed by a pretreatment program approved under 33 U.S.C.
13 § 1342(b)(8), by diluting untreated wastewater prior to discharge into a POTW operated by
14 Livermore WRP without obtaining an appropriate discharge permit from the Livermore WRP.
15 Bonner Metal Processing directed its employees to dilute contaminated industrial wastewater
16 with water delivered to the facility and then to discharge the diluted rinse water directly to the
17 sewer through a floor drain.

18 3. Bonner Metal Processing agrees to give up all rights that it would have if it chose
19 to proceed to trial, including the rights to a jury trial with the assistance of an attorney; to
20 confront and cross-examine government witnesses; to remain silent or testify; to move to
21 suppress evidence or raise any other Fourth or Fifth Amendment claims; to any further discovery
22 from the government; and to pursue any affirmative defenses and present evidence.

23 4. Bonner Metal Processing agrees to give up its right to appeal its conviction, the
24 judgment, and orders of the Court issued in connection with this Plea Agreement. Bonner Metal
25 Processing also agrees to waive any right it may have to appeal its sentence.

26 5. Bonner Metal Processing agrees not to file any collateral attack on its conviction
27 or sentence, including a petition under 28 U.S.C. §2255, at any time in the future after it is
28 sentenced, except for a claim that its constitutional right to the effective assistance of counsel

1 was violated.

2 6. Bonner Metal Processing agrees not to ask the Court to withdraw its guilty plea at
3 any time after it is entered.

4 7. The Sentencing Guidelines do not apply to this matter. Bonner Metal Processing
5 and the government agree that pursuant to U.S.S.G. Section 8C2.10, a determination of the
6 appropriate fine amount for a corporation is within the Court's discretion. The parties agree that
7 remedial orders and restitution orders are not necessary given the fact that the harm caused by the
8 offense has been remedied by defendant Bonner Metal Processing. Bonner Metal Processing
9 agrees that, regardless of any other provision in this agreement, the government may and will
10 provide to the Court and the Probation Office all information relevant to the charged offenses or
11 the sentencing decision.

12 8. Bonner Metal Processing agrees that an appropriate disposition of this case is set
13 forth in this paragraph and in paragraph 9 below: Bonner Metal Processing will serve a three-
14 year term of probation. The terms and conditions of probation will be as follows:

- 15 a. Bonner Metal Processing will not knowingly commit another federal, state
16 or local crime.
- 17 b. Bonner Metal Processing will complete and implement a pollution
18 prevention plan and submit the plan to the City of Livermore for review.
19 The pollution prevention plan shall include all of the following: (i) a
20 analysis of one or more of the pollutants, as directed by the City of
21 Livermore Water Reclamation Plant (LWRP) or the San Francisco Bay
22 Regional Water Quality Control Board, that Bonner introduces into the
23 LWRP, a description of the sources of the pollutants, and a comprehensive
24 review of the processes used by Bonner that result in the generation and
25 discharge of the pollutants; (ii) a analysis of the potential for pollution
26 prevention to reduce the generation of the pollutants, including the
27 application of innovative and alternative technologies and any adverse
28 environmental impacts resulting from the use of those methods; (iii) a

1 detailed description of the tasks and time schedules required to investigate
2 and implement various elements of pollution prevention techniques; (iv) a
3 statement of Bonner's pollution prevention goals and strategies, including
4 priorities for short-term and long-term action; (v) a description of
5 Bonner's existing pollution prevention methods; (vi) a statement that
6 Bonner's existing and planned pollution prevention strategies do not
7 constitute cross media pollution transfers unless clear environmental
8 benefits of such an approach are identified to the satisfaction of the
9 LWRP, and information that supports that statement; (vii) proof of
10 compliance with the Hazardous Waste Source Reduction Act of 1989
11 [Article 11.9 (commencing with Section 25244.12) of Chapter 6.5 of
12 Division 20 of the Health and Safety Code, California Code of
13 Regulations] if Bonner is also subject to that act; (viii) an analysis, to the
14 extent feasible, of the relative costs and benefits of the possible pollution
15 prevention activities; (ix) a specification of, and rationale for, the
16 technically feasible and economically practicable pollution prevention
17 measures selected by Bonner for implementation.

18 c. The probation officer will be permitted to visit Bonner Metal Processing's
19 business location(s). The probation officer is authorized to question
20 knowledgeable individuals and to examine the company's books and
21 records.

22 d. Bonner Metal Processing will notify the probation officer immediately
23 upon learning of the commencement of any civil litigation, criminal
24 prosecution or investigation, or administrative proceeding against the
25 company, or any investigation or formal inquiry by governmental
26 authorities regarding the company.

27 9. Bonner Metal Processing agrees to pay a criminal fine in the amount of \$100,000
28 plus interest pursuant to 28 U.S.C. 1961, in 36 equal monthly installments during the term of

1 probation. Bonner Metal Processing agrees that, before or after sentencing, it will, upon request
2 of the Court, the government, or the U.S. Probation Office, provide accurate and complete
3 financial information, release funds and property under its control, submit sworn statements and
4 give depositions under oath concerning its assets and ability to pay, and make a good faith effort
5 to pay the fine amount. Bonner Metal Processing agrees to pay the special assessment at the time
6 of sentencing.

7 10. Bonner Metal Processing agrees not to knowingly commit or attempt to commit
8 any crimes before sentence is imposed. Bonner Metal Processing also agrees not to intentionally
9 provide false information to the Court, the Probation Office, Pretrial Services, or the government;
10 or fail to comply with any of the other promises it has made in this Agreement. Bonner Metal
11 Processing agrees that, if it fails to comply with any promises it has made in this Agreement, then
12 the government will be released from all of its promises below, but Bonner Metal Processing will
13 not be released from its guilty plea.

14 11. Bonner Metal Processing agrees that this Agreement contains all of the promises
15 and agreements between the government and Bonner Metal Processing, and it will not claim
16 otherwise in the future.

17 12. Bonner Metal Processing agrees that this Agreement binds the U.S. Attorney's
18 Office for the Northern District of California only, and does not bind any other federal, state, or
19 local agency.

20 The Government's Promises

21 13. The government agrees not to file or seek any additional charges that could be
22 filed as a result of the investigation that led to the captioned Information.

23 14. The government agrees that the appropriate sentence is as set forth in paragraphs 8
24 and 9 above.

25 The Defendant's Affirmations

26 15. Bonner Metal Processing confirms that it has had adequate time to discuss this
27 case, the evidence, and this Plea Agreement with its attorney, and that he has provided Bonner
28 Metal Processing with all the legal advice that it requested.

1 16. Robert K. Bonner, as President of Bonner Metal Processing, is executing this
2 Plea Agreement on behalf of the company. Mr. Bonner confirms that while he considered
3 signing this Agreement, and at the time he signed it, he was not under the influence of any
4 alcohol, drug, or medicine.

5 17. Bonner Metal Processing confirms that its decision to enter a guilty plea is made
6 knowing the charges that have been and could be brought against it, any possible defenses, and
7 the benefits and possible detriments of proceeding to trial. Bonner Metal Processing also
8 confirms that its decision to plead guilty is made voluntarily, and no one coerced or threatened it
9 to enter into this agreement.

10 18. Bonner Metal Processing understands that its guilty plea will be entered by its
11 President Robert Bonner, and represents that Robert Bonner has authority to enter the plea on its
12 behalf. Bonner Metal Processing represents that it has taken all acts necessary to authorize the
13 entry of a guilty plea in this matter. The member's resolution demonstrating Bonner Metal
14 Processing's authorization of the guilty plea and designation of an agent to enter the guilty plea is
15 attached hereto as Exhibit A.

16
17 Dated: September __, 2001

Bonner Metal Processing Metal Processing, LLC

18
19 By: _____
20 ROBERT K. BONNER, President

21 ROBERT S. MUELLER, III
22 United States Attorney

23
24 Dated: September __, 2001

25 
26 MELINDA L. HAAG
27 Assistant United States Attorney
28 Chief, White Collar Crime Section

I have fully explained to my client all the rights that a criminal defendant has and all the
terms of this Agreement. In my opinion, my client understands all the terms of this Agreement

PLEA AGREEMENT

1 and all the rights it is giving up by pleading guilty, and, based on the information now known to
2 me, its decision to plead guilty is knowing and voluntary.

3
4 Dated: September __, 2001

5 STEPHEN V. WICKERSHAM, Esq.
6 Law Offices of Stephen V. Wickersham
7 Counsel for Defendant Bonner Metal
8 Processing, LLC
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